

~~UNITED STATES OF AMERICA~~
~~BEFORE THE NATIONAL LABOR RELATIONS BOARD~~

MACHINE MAINTENANCE, INC., d/b/a
MACHINE MAINTENANCE AND EQUIPMENT
COMPANY

and

Case 14--CA--21237--2

LOCAL 513, INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL--CIO

May 30, 1991
DECISION AND ORDER

By Members Donovan, Orvath, and Raudabaugh

On March 20, 1991, the General Counsel of the National Labor Relations

Board issued a consolidated complaint¹ alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 14--RC--11000. (Official notice is taken of the "'record'" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On April 8, 1991, the General Counsel filed a Motion for Summary Judgment. On April 18, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response.

¹ Although the General Counsel, on April 8, 1991, petitioned the Board to sever Case 14--CA--21237--2 from Case 14--CA--21237, the Regional Director, by order dated April 12, 1991, severed the cases himself.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the ground that the certification of the Union and the proceedings in Case 14--RC--11000 are flawed and invalid because of factual and legal errors alleged by the Respondent in its Request for Review in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, Machine Maintenance, Inc., d/b/a Machine Maintenance and Equipment Company, a Missouri corporation, has been engaged in the nonretail sale, distribution, and repair of heavy machinery at its facility in St. Louis, Missouri, where it annually purchased and received products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce

within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following an election, the Union was certified on January 14, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

All mechanics, mechanic helpers, mechanic apprentices, and drivers employed by the Employer at its St. Louis, Missouri facility, excluding sales employees, office clerical and professional employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since January 17, 1991, the Union has requested the Respondent to bargain and, since January 17, 1991, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after January 17, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Machine Maintenance, Inc., d/b/a Machine Maintenance and Equipment Company, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 513, International Union of Operating Engineers, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All mechanics, mechanic helpers, mechanic apprentices, and drivers employed by the Employer at its St. Louis, Missouri facility, excluding

sales employees, office clerical and professional employees, guards, and supervisors as defined in the Act.

(b) Post at its facility in St. Louis, Missouri, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 30, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 513, International Union of Operating Engineers, AFL--CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All mechanics, mechanic helpers, mechanic apprentices, and drivers employed by us at our St. Louis, Missouri facility, excluding sales employees, office clerical and professional employees, guards, and supervisors as defined in the Act.

MACHINE MAINTENANCE, INC., d/b/a
MACHINE MAINTENANCE AND EQUIPMENT
COMPANY

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 611 North 10th Street, Suite 400, Saint Louis, Missouri 63101-1932, Telephone 314--425--4361.